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ment the prosecuting attorney stated in open court that a notice to produce an incriminating document had been served on the defendant, and asked the defendant if he had the paper in his possession. The court directed the jury to disregard the question and the statements. *Held*, that the admission of the evidence was error but was cured by the direction of the trial court. *People v. Gibson*, 55 N. Y. L. J. 573 (N. Y. Ct. of Appeals).

This *dictum* follows that of *McKnight v. United States*, 115 Fed. 972, 976. The court noticed the severe condemnation of that case by Professor Wigmore, but refused to be influenced. See 3 WIGMORE, EVIDENCE, § 2273, n. 3. For a criticism of the doctrine that a notice to produce documents in a criminal trial is in violation of the defendant's privilege against incrimination, see 29 HARV. L. REV. 211.

EVIDENCE — SUPPLEMENTING MEMORY — TESTIMONY OF BOOKKEEPER OF LARGE ESTABLISHMENT WHO HAS NO PERSONAL KNOWLEDGE OF FACTS RECORDED. — To prove an account against the defendant, plaintiff introduced in evidence the testimony of his bookkeeper, employed in a large mercantile establishment. The bookkeeper testified from his books, compiled from memoranda furnished by clerks, in the regular course of business, who alone had first-hand knowledge of the facts recorded. The memoranda had been destroyed by fire and the identity of the clerks lost. Over objection, the bookkeeper was permitted to supplement his memory from the records in his books, although he had no personal knowledge of the facts there recorded. *Held*, that there was no error. *Givens v. Pierson*, 167 Ky. 574, 181 S. W. 324.

For a discussion of the principles involved, see NOTES, p. 863.

FOREIGN CORPORATIONS — SERVICE OF PROCESS — JURISDICTION OVER CAUSE OF ACTION ARISING OUTSIDE THE STATE. — A foreign corporation doing business in the state appointed an agent to receive service of process, in accordance with state law. Service was made on this agent on a cause of action arising outside the state. *Held*, that a personal judgment may be founded on such service. *Bagdon v. Phila. & Reading Coal Co.*, 217 N. Y. 432.

Last year the Supreme Court held that where there had been no express appointment of an agent to receive process, it would be a denial of due process to extend the "implied" consent to a cause of action arising beyond the state. *Simon v. Southern Ry.*, 236 U. S. 115. See 28 HARV. L. REV. 804. Jurisdiction in the absence of express appointment has generally been justified on the ground that doing business in the state indicates a real consent to all valid conditions, as to service, etc., contained in state statutes. *St. Clair v. Cox*, 106 U. S. 350, 356. See BEALE, FOREIGN CORPORATIONS, § 266. It was urged upon the court in the principal case that in accordance with this doctrine, actual and implied consent must be coextensive, and that hence the *Simon* case compelled the court to hold the service invalid even where there was an agent expressly appointed. The court met the dilemma by declaring that "implied consent" is not real, but is the creature of law, and subject to such limitations as the law imposes, whereas consent in the principal case was actual, and voluntary. A recent case in the federal district court has taken the same distinction. *Smolik v. Phila. & Reading Coal Co.*, 222 Fed. 148. But see *Fry v. Denver & R. G. R. Co.*, 226 Fed. 893. A person may consent, it seems, to any kind of service, for any purpose. *Tharsis Sulphur Co. v. Société des Métaux*, 58 L. J. Q. B. 435; *Montgomery, Jones & Co. v. Liebenthal*, [1898] 1 Q. B. 487 (C. A.). If, therefore, consent in the principal case was voluntary, the reasoning of the court is irresistible. The power of the state to impose such a condition to the right of a foreign corporation to do business in the state is, however, doubtful, under the recent doctrine of "unconstitutional conditions." *Western Union Tel. Co. v. Kansas*, 216 U. S. 1; *Pullman Co. v. Kansas*, 216 U. S. 56. See *Baltic Mining Co. v. Massachusetts*, 231 U. S. 68, 83.